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DISTRICT OF UTAH

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Colgate-Palmolive Company

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

N8 MEDICAL, INC.,

Plaintiff,

v.

COLGATE-PALMOLIVE COMPANY,

Defendant.

**~~PROPOSED~~ ORDER GRANTING, IN
PART, COLGATE-PALMOLIVE
COMPANY'S (1) PARTIAL MOTION TO
DISMISS N8 MEDICAL INC.'S FIRST
AMENDED COMPLAINT; and (2) MOTION
TO DISMISS BYU'S JOINDER AND
COMPLAINT**

Case No. 2:13-cv-01017

Judge Bruce S. Jenkins

On August 5, 2014, beginning at 1:30 p.m., the Court held a hearing on Defendant Colgate-Palmolive Company's ("Colgate") Partial Motion to Dismiss N8 Medical Inc.'s ("N8") First Amended Complaint [D.E. 78], and Colgate's Motion to Dismiss Plaintiff-Intervenor Brigham Young University's ("BYU") Joinder in Plaintiff N8 Medical Inc.'s First Amended Complaint and Complaint Asserting Independent Claims [D.E. 80]. Kenneth B. Black, Jill M.

Pohlman, and David L. Mortensen appeared on behalf of Colgate; Brent O. Hatch and Paul J. Dobrowski appeared on behalf of N8; Robert S. Clark and Gregory M. Hess appeared on behalf of BYU; and, Richard R. Thomas was present on behalf of Proposed Intervenor N8 Pharmaceuticals. Having considered the pleadings, the memoranda of the parties, the oral arguments of counsel, and for good cause appearing, the Court hereby decrees and orders as follows:

Partial Motion to Dismiss N8 First Amended Complaint

1. Colgate's partial motion to dismiss [D.E. 78] is DENIED except as follows:

a) The motion to dismiss N8's Seventh Cause of Action (Negligence and Gross Negligence) in N8's First Amended Complaint [D.E. 66] is GRANTED, without prejudice. N8 is hereby granted leave to amend its First Amended Complaint to re-file claims averring negligence and/or gross negligence. Any such amendment shall be filed no later than August 25, 2014, *i.e.*, twenty (20) days from the hearing date.

b) The motion to dismiss N8's Second Cause of Action (Breach of the Implied Duty of Good Faith and Fair Dealing) is GRANTED. Under New York law, the implied Duty of Good Faith and Fair Dealing is not a separate cause of action and will be considered only as part of the breach of contract claims.

Motion to Dismiss BYU's Complaint

2. Colgate's partial motion to dismiss [D.E. 80] is DENIED except as follows:


a) BYU's "Joinder in Claims of N8 Medical, Inc." as set forth on page 2 of its Joinder and Complaint [D.E. 71], does not clearly state which of N8's claims BYU intended to join. BYU shall file an amended Joinder that specifically states which of N8's remaining claims and/or allegations BYU joins. Any such amendment shall be filed no later than August 25, 2014,

i.e., twenty (20) days from the hearing date. If BYU does not timely file such an amendment, BYU's Joinder in N8's claims shall be dismissed.

b) The motion to dismiss the Second Cause of Action (Breach of the Implied Duty of Good Faith and Fair Dealing) is GRANTED. Under New York law, the implied Duty of Good Faith and Fair Dealing is not a separate cause of action and will be considered only as part of the breach of contract claims.

Dated this 15th day of August, 2014.

BY THE COURT:



The Honorable Bruce S. Jenkins
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the August 14, 2014, a true and correct copy of the foregoing
**[PROPOSED] ORDER GRANTING, IN PART, COLGATE-PALMOLIVE COMPANY'S
(1) PARTIAL MOTION TO DISMISS N8 MEDICAL INC.'S FIRST AMENDED
COMPLAINT; and (2) MOTION TO DISMISS BYU'S JOINDER AND COMPLAINT**
was served by email to the following counsel of record:

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